RECORD

SUPREME COURT

OCTOBER

CHUN SHA

THE UNITED STATES
STATES MARSHAL
CALIFORNIA.

APPEAL FROM THE DISTRICT
THE NORTHERN

FILED SEP

RECORD, CASE No. 15,399.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 1015.

CHUN SHANG YUEN, APPELLANT,

vs.

THE UNITED STATES AND GEORGE E. GARD, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 25, 1893.

1 United States District Court, Northern District of California.

In the Matter of the Application of CHUN SHANG YUEN for a Writ of *Habeas Corpus*. No. 10737.

To the honorable the district court of the United States in and for the northern district of California, ninth circuit:

And now comes Chun Shang Yuen and makes this his petition and complaint to this honorable court, and respectfully shows:

I. That your petitioner is a person of the Chinese race, born in China, and not a naturalized citizen of the United States, and that at all the times hereinafter mentioned, and more especially at the time of the passage of the act of Congress approved May 5th, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," he was, always has been and still is entitled to remain in the United States, in that he was within the United States at the time of the passage of the act of Congress approved May 6th, 1882, and entitled "An act to execute certain treaty stipulations relating to Chinese," and has never thereafter and up to the time of making this his petition been without the United States, and that he now resides, and has resided for more than one year last past, in the county of Los Angeles, in the southern district of California.

II. That your petitioner on the 17th day of November, 1880, the day the treaty between the United States and China concerning immigration was concluded and signed, was within the United States, and was under the terms of said treaty accorded all the rights, privileges, immunities and exemptions which were then accorded to the citizens and subjects of the most favored nation, and prior to said last-named day, and in or about the month of July, 1879, had come to the United States with the intention of remaining and taking up his permanent residence therein, and with no definite intention of returning to China, and at the time of said treaty had become and has ever since been a permanent resident of the United States under and in pursuance of the invitation extended to him and at that time to all other Chinamen under the provisions of the fifth and sixth articles of the additional articles to the treaty between the United States of America and the Ta Tsing empire of the 18th of June, 1858, concluded and signed on the 28th day of July, 1868 (Burlingame treaty), which then and there declared that the high contracting parties "cordially recognize the inherent and

2 inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or of permanent residents," and further declared that "Chinese subjects * * * residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to * * * residence as may be there enjoyed by the citizens or subjects of the most favored nation."

III. That heretofore, to wit, on the 31st day of August, 1893, one P. T. Durfy presented to the Honorable E. M. Ross, United States district judge in and for the southern district of California, a complaint verified by him, which charged that your petitioner was a Chinese laborer residing within the southern district of California, and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and that your petitioner was then and there entitled to remain in the United States, and was after one year from the passage of said act found unlawfully within the jurisdiction of the United States without the certificate of residence provided for in section 6 of said act. That thereupon the said district judge made an order directing that the said complaint be filed, and that a warrant issue, which warrant was thereafter issued and delivered to the marshal of the United States in and for the southern district of California. Copies of said complaint, order and warrant are hereto attached and made part hereof.

That afterwards, to wit, on the 4th day of September, 1893, the said United States marshal apprehended your petitioner and took him into custody and produced him before the said district judge.

IV. That the said P. T. Durfy, who made and presented the complaint hereinabove referred to, is not and was not at any of the times herein mentioned, a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, or in any way connected with any of the executive departments of the Government of the United States.

V. That thereafter, on the 4th day of September, 1893, your said petitioner was brought before the district court of the United States in and for the southern district of California, and testimony was introduced on behalf of the Government and on behalf of your petitioner, and the cause thereupon submitted, and on the 5th day of September, 1893, the said district court in and for the southern district of California made an order directing that your petitioner be deported from the United States to China, and remanded your petitioner to the custody of Geo. E. Gard, United States marshal in and for the southern district of California. Copies of said orders are hereto attached and made a part hereof.

VI. That your petitioner is detained and restrained of his liberty by and in the custody of George E. Gard, the marshal of the United States in and for the southern district of California, under and by color of the authority of the United States, wrongfully and unlawfully, as your petitioner is informed and verily believes, and in violation of the provisions of the Constitution of the United States, and of the laws thereof, and of the various treaties made and entered into between the United States of America and the Chinese empire.

VII. That he has not been apprehended and is not detained by virtue of any judgment, order or decree, or other judicial process of any court other than the said order of the said United States judge heretofore referred to herein, and that he is now detained by virtue of the alleged claim and authority given to the said marshal of the

United States in and for the southern district of California by and under said order made by said judge.

3 VIII. That, as your petitioner is informed and verily believes, his detention by the said United States marshal in and for the southern district of California, by and under the direction of the order of said United States judge, is without jurisdiction and void and unconstitutional, and that your petitioner is restrained of his liberty without due process of law and against his rights under the Constitution of the United States and the laws thereof and the various treaties between the United States of America and the Chinese empire, and unlawfully and without authority, under the guise and color of proceedings against him for the commission of the alleged offense against the provisions of the said 6th section of the said act of Congress of May 5th, 1892, to wit, of not having applied to the collector of internal revenue of his district for a certificate of residence and of now being without such certificate of residence, which said alleged offense is not, as this petitioner is informed and verily believes, any offense whatever, in that the whole of said 6th section of said act of Congress of May 5th, 1892, is unconstitutional, void, and of no effect.

IX. That your petitioner is informed and verily believes that his detention by the United States marshal in and for the southern district of California, as aforesaid, is without jurisdiction, and void for the reason that the said P. T. Durfy, who made and presented the complaint hereinabove referred to, was not at any of the times herein mentioned a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, and that the filing of said complaint and the issuance of a warrant thereon was without authority of law and in excess of the jurisdiction of the said district judge for the southern district of California, and that all proceedings thereunder were therefore illegal and void.

X. And your petitioner further says that no previous application for a writ of *habeas corpus* has been made by him to this or any other court or judge.

Wherefore your petitioner prays that this honorable court will order a writ of *habeas corpus* to be issued out of this court to said George E. Gard, the marshal of the United States in and for the southern district of California, requiring him to forthwith produce the body of your petitioner before this honorable court, and there to abide what shall be ordered by this honorable court in the premises.

And as in duty bound your petitioner will ever pray.

CHIN SHANG YUEN.
(Chinese signature.)

HARVEY S. BROWN AND
THOS. D. RIORDAN,
Attorneys for Petitioner.

CITY OF SAN FRANCISCO, } ss:
Northern District of California, }

Chun Shang Yuen, being duly sworn, deposes and says that he is the petitioner and complainant hereinbefore named; that he has

heard read and translated to him the foregoing petition and complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

CHIN SHANG YUEN.
(Chinese signature.)

Subscribed and sworn to before me this 11th day of September, 1893.

[SEAL.] JNO. F. LYONS,
Notary Public in and for the City & County of San Francisco, State of California.

4 [Endorsed:] No. —. U. S. district court, northern district of California. *In re* application of Chun Shang Yuen for writ of *habeas corpus*. Petition for writ. Filed September —, 1893. —— ——, clerk, by —— ——, deputy clerk. Harvey S. Brown and Thos. D. Riordan, attorneys for petitioners.

5 UNITED STATES OF AMERICA, } ss:
Southern District of California, }

Be it remembered that on this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, before me, William M. Van Dyke, a commissioner duly appointed by the circuit court of the United States of America for the southern district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, personally appeared P. T. Durfy, who, being duly sworn according to law, deposes and says that Chun Shang Yuen, being a Chinese laborer at and residing in the county of Los Angeles, State of California, within the southern district of California and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and who was then and there entitled to remain in the United States, was, after one year from the passage of said act, to wit, on the 30th day of August, A. D. 1893, found unlawfully within the jurisdiction of the United States, to wit, at the county of Los Angeles, State of California, without the certificate of residence provided for in said act.

He, the said Chun Shang Yuen, is and was residing in said county and State and in the first collection district of California during all the time within one year after the passage of said act—

6 Contrary to the form of the statutes of the United States in such case made and provided and against the peace and dignity of the said United States.

P. T. DURFY.

Sworn to and subscribed this 31st day of August, 1893, before me—

WM. M. VAN DYKE,
Commissioner of U. S. Circuit Court,
Southern District of California.

Let the foregoing complaint be filed and a warrant issue.

E. M. ROSS,
Dist. Judge.

(Endorsed:) No. 469. U. S. district court, southern district of California. United States of America *vs.* Chun Shang Yuen. Complaint. Filed August 31st, 1893. E. H. Owen, clerk.

I, E. H. Owen, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an originial complaint filed in my office August 31st, 1893, in the cause entitled The United States of America *vs.* Chun Shang Yuen, No. 469, and now remaining of record therein.

Attest my hand and the seal of said district court this 6th day of September, A. D., 1893.

[SEAL.] E. H. OWEN, *Clerk,*
By WM. M. VAN DYKE, *Deputy Clerk.*

7 UNITED STATES OF AMERICA, }
Southern District of California, } *ss:*

The President of the United States of America to the marshal of the United States for the southern district of California and to his deputies or any or either of them, Greeting:

Whereas complaint on oath hath been made to me charging Chun Shang Yuen with a violation of the sixth section of the act of Congress entitled "An act to prevent the coming of Chinese persons into the United States," approved May 5, 1892:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Chun Shang Yuen and bring his body before the district court of the United States for the southern district of California on Monday, the 4th day of September, 1893, at 10.30 o'clock a. m., that he may then and there be dealt with according to law for the said offence.

Given under my hand this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the one hundred and eighteenth.

E. M. ROSS,
U. S. District Judge in and for the
Southern District of California.

Attest, etc.:

[SEAL.] E. H. OWEN, *Clerk.*

By virtue of the within writ I have the body of Chang
8 Young Yuen before Hon. E. M. Ross this 4th day of September, 1893.

GEO. E. GARD, *U. S. Marshal,*
By W. B. GARD, *Deputy.*

(Endorsed:) No. 469. U. S. district court, southern district of California. United States of America *vs.* Chun Shang Yuen. Warrant of arrest. Filed Sept. 4th, 1893. E. H. Owen, clerk.

9 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the fourth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
vs.
CHUN SHANG YUEN. } No. 469. Sec. 6, Geary Act.

George J. Denis, United States attorney for the southern district of California appearing on behalf of the Government, and G. Wiley Wells, Esq., appearing on behalf of the defendant, and the defendant being present in the custody of the United States marshal, and the marshal having made return on the warrant hereinbefore issued, this cause is called for trial. Now comes the defendant's attorney and asks that this cause be continued on the ground that certain of the defendant's witnesses are absent, which motion is denied and the trial is ordered to proceed; and thereupon Peter Durfy and W. B. Gard, having been called for the United States, were duly sworn and gave their testimony for the United States, and the United States closed its case. George C. Lem, a witness called on behalf of the defendant, having been duly sworn, gave his testimony for the defendant, and, there being no
10 further testimony offered, the matter is thereupon submitted to the court for its consideration and decision.

I, E. H. Owen, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court September 4th, 1893, in the cause entitled The United States of America *vs.* Chun Shang Yuen, No. 469, and now remaining of record therein.

Attest my hand and the seal of said circuit court this
[SEAL.] 6th day of September, A. D. 1893.

E. H. OWEN, *Clerk,*
By WM. M. VAN DYKE,
Deputy Clerk.

11 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Tuesday, the fifth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
vs.
CHUN SHANG YUEN. } No. 469. Sec. 6, Geary Act.

This cause having heretofore been submitted to the court for its consideration and decision, it is now, on this 5th day of September, 1893—George J. Denis, Esq., United States attorney for the southern district of California, appearing on behalf of the United States, and G. Wiley Wells, Esq., appearing on behalf of the defendant, and the defendant being present in custody of the United States marshal—ordered that there be findings in accordance with a written opinion of the court, filed herein this day, and that said defendant, Chun Shang Yuen, be deported.

12 In the District Court of the United States, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff,
vs.
CHUN SHANG YUEN, Defendant. } No. 469.

Findings, Order, and Judgment.

A verified complaint having been filed in this court charging Chun Shang Yuen with a violation of the sixth section of a certain act of Congress approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and a warrant for the arrest of the said Chun Shang Yuen having been issued by me, Erskine M. Ross, United States district judge in and for the southern district of California, made returnable before the district court for the southern district of California on the 4th day of September, 1893, and the said Chun Shang Yuen having been duly apprehended upon said warrant by the United States marshal in and for the southern district of California and brought before the said court upon the 4th day of September, 1893, a hearing was thereupon had of the matters charged in said

13 complaint, the United States of America being represented by its attorney, George J. Denis, Esq., and the said Chun Shang Yuen by G. Wiley Wells, Esq., and testimony having been adduced, I, Erskine M. Ross, judge as aforesaid, from such testimony do find that said Chun Shang Yuen is by race, color, dress, and appearance a Chinese person, and is and was at the times hereinafter mentioned a laborer by occupation; that he was a resident of the State of California, to wit, of the county of Los Angeles, at the time of

the passage of the act of Congress of May 5, 1892, and has since continued such resident; that said Chun Shang Yuen was, after May 5, 1892, found to be a resident within the jurisdiction of the United States and of this district without the certificate of residence provided for in the act of Congress above referred to; that the said Chun Shang Yuen has neglected, failed, and refused to comply with the provisions of said act in this, to wit, that he, the said Chun Shang Yuen, a Chinese laborer, neglected, failed, and refused to apply for and obtain the certificate of residence required by said act; that Chun Shang Yuen has not established to my satisfaction that, by reason of accident, sickness, or other unavoidable cause, he was unable to procure such certificate; that said Chun Shang Yuen is unlawfully within the United States:

Now, therefore, I, Erskine M. Ross, judge as aforesaid, upon the foregoing facts do hereby order that said Chun Shang Yuen be removed from the United States to China; and it is further ordered
14 that said deportation of the said Chun Shang Yuen be made from the port of San Francisco, within the limits of the northern district of California, and that he be hereby committed to the custody of the United States marshal for the southern district of California to carry out this order.

Dated at Los Angeles, this 8th day of September, A. D. 1893.

E. M. ROSS,
District Judge of the United States for the Southern District of California.

(Endorsed:) No. 469. In the district court of the United States for the southern district of California. The United States of America *vs.* Chun Shang Yuen. Findings, order, and judgment. Filed Sep. 8, 1893. E. H. Owen, clerk; Wm. M. Van Dyke, deputy.

I, E. H. Owen, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of the original findings, order, and judgment made, filed, and entered by said court in the cause entitled The United States of America *vs.* Chun Shang Yuen, No. 469, on the 8th day of September, 1893, and now remaining on file and of record therein.

[SEAL.] Attest my hand and seal of said district court this 9th day of September, A. D. 1893.

E. H. OWEN, *Clerk*,
By WM. M. VAN DYKE,
Deputy Clerk.

(Endorsed:) No. 10737. U. S. district court, northern district of California. In the matter of the application of Chun Shang
15 Yuen for a writ of *habeas corpus*. Petition for writ. Filed September 11th, 1893. Southard Hoffman, clerk. Harvey S. Brown and Thos. D. Riordan, attorneys for petitioner, 6 Montgomery avenue, San Francisco.

16 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 11th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable William W. Morrow, judge.

In the Matter of the Application of CHUN SHANG YUEN for a Writ of *Habeas Corpus*. No. 10737.

In this matter the application for the issuance of a writ of *habeas corpus* this day came on for hearing before the court—Harvey S. Brown, Esq., and Thomas D. Riordan, Esq., appearing as attorneys for the petitioner, and Charles A. Garter, Esq., United States attorney for the northern district of California, appearing on behalf of the United States—and, after hearing Mr. Riordan and Mr. Garter, it is by the court now here ordered that the application for the issuance of a writ of *habeas corpus*, as prayed for in the petition herein, be, and the same is hereby, denied, and that said petition be, and the same is hereby, dismissed.

17 United States District Court, Northern District of California.

In the Matter of the Application of CHUN SHANG YUEN for a Writ of *Habeas Corpus*.

Notice of Appeal.

The petitioner in the above-entitled proceeding, feeling himself aggrieved by the order heretofore made and entered herein in the district court of the United States in and for the northern district of California on the 11th day of September, 1893, declining to grant a writ of *habeas corpus* as prayed for in the petition herein and dismissing the petition, doth hereby appeal from the said order of said district court to the Supreme Court of the United States, and he prays that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

San Francisco, September 11th, 1893.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
Attorneys for the Petitioner and Appellant.

Due service of a copy of the within is hereby admitted this 11th day of Sept., 1893.

CHAS. A. GARTER,
U. S. Attorney for North. Dist. of Cal.

(Endorsed:) Filed Sept. 11th, 1893. Southard Hoffman, clerk.

18 In the Supreme Court of the United States.

In the Matter of the Application of CHUN SHANG YUEN for a Writ of *Habeas Corpus*.

CHUN SHANG YUEN, Appellant and Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA and GEORGE E. GARD, U. S. Marshal in and for the Southern District of California, Respondents and Defendants in Error.

Assignment of Errors.

Afterwards, to wit, on the 11th day of September, 1893, comes the said appellant and plaintiff in error, by Harvey S. Brown and Thos. D. Riordan, his attorneys, — says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That the district court of the United States in and for the northern district of California erred in declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed herein, because the sixth section of the act of Congress ap-
19 proved on the 5th day of May, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," etc., and each and every part thereof is unconstitutional and void and of no effect.

Second. That the said district court of the United States in and for the northern district of California erred in declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, because the presentation to and filing of a complaint with the Hon. E. M. Ross, United States district judge in and for the southern district of California, and the issuance of a warrant thereon was in excess of the jurisdiction of said judge, and therefore all proceedings had thereafter were illegal, void, and of no effect.

Third. That the district court of the United States in and for the northern district of California erred in declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, because the respondents in error had no warrant or authority of the law to confine or imprison the petitioner nor to detain him in custody.

Fourth. That the district court of the United States in and for the northern district of California erred in not issuing the writ of *habeas corpus* prayed for in the said petition and thereafter discharging said petitioner upon the facts set forth in the said petition.

Wherefore the said petitioner prays that the order of the district court in and for the northern district of California, entered on the 11th day of September, 1893, declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein,

be reversed, and that the district court of the United States be ordered to enter an order granting a writ of *habeas corpus* as prayed
20 for in said petition.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
Att'ys for Appellant and Plaintiff in Error.

Due service of a copy of the within is hereby admitted this 11th day of Sept., 1893.

CHAS. A. GARTER,
U. S. Attorney for North. Dist. of Cal.

(Endorsed:) Filed Sept. 11th, 1893. Southard Hoffman, clerk.

21 UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

I, Southard Hoffman, clerk of the district court of the United States in and for the northern district of California, in the ninth judicial circuit, do hereby certify that the foregoing pages, numbered from 1 to twenty (20), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of Chun Chang Yuen for a writ of *habeas corpus*, as the same remain of record on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of San Francisco, in the northern district of California, in the ninth circuit, this 13th day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

Seal of the U. S. District Court, Northern Dist. of California.

SOUTHARD HOFFMAN, *Clerk.*

Endorsed on cover: Case No. 15,399. N. California D. C. U. S. Term No., 1015. Chun Shang Yuen, appellant, *vs.* The United States and George E. Gard, United States marshal for the southern district of California. Filed September 22d, 1893.